

DELEGATED APPLICATION REPORT

Ward: Church Ward

App Ref: PL/24/1722 Lawful development: Existing use

Address: 66 CRESSINGHAM ROAD, READING, RG2 7JR

Proposal: Certificate of Lawfulness for Existing use of the property as five self-contained flats (Use Class C3) within a two-storey, detached house comprising of 2x1 bed flats at ground floor (Flats 1&2), 1xstudio flat and 1x1 bed at first floor (Flats 3 & 4) in the main house, and 1xstudio flat in an annexe (amended)

Applicant: Mr Antonio Mariano

Received date: 23/12/2024

Target Decision date: 27/03/2025 (Ext)

Case Officer: Alison Amoah

1. SITE DESCRIPTION

Site visit date: 30th January 2025

The application site is a two storey detached house with a single storey rear annexe (mostly attached to the original dwelling, but with no existing internal access from the main dwelling), accessed via a side gate. It is located on the northern side of Cressingham Road. It comprises, as observed during the site visit, the following:

Ground floor – Two x 1-bedroom flats (Flats 1 & 2)

First floor – One studio and one x 1 bed flat (Flats 3 & 4)

Annexe – One studio (Flat 5)

There is a garden to the rear and an outbuilding to the eastern boundary with number 64 Cressingham Road.



Google Earth aerial image

2. PROPOSAL AND SUPPORTING INFORMATION

Applications for a Lawful Development Certificate for existing use under section 191 of the Town and Country Planning Act 1990. A certificate is sought to confirm that the existing use as five self-contained flats – three x 1 beds and two x studios (current Use Class C3) based on evidence that the use has been in existence for at least 4 years continuously before the application was submitted.

To comply with section 191(5) or 192(3) of the Act the applicant needs to submit evidence to substantiate the claim for the established existing use.

The submission is for a Certificate of Lawfulness for the conversion of a C3 dwelling house into 5 flats.

The submitted application form identifies that the use commenced on 1st October 2017.

Plans and other information considered:

As received 23rd December 2024:

- Cover letter from the applicant dated 20/12/2024
- Location Plan
- Ground Floor Flat, the Annexe [Floor Plan]
- Ground Floor Flat, Flat 1 [Floor Plan]
- Ground Floor Flat, Flat 2 [Floor Plan]
- First Floor Flat, Flat 3 [Floor Plan]
- First Floor Flat, Flat 4 [Floor Plan]
- Annexe Energy Performance Certificate (EPC) valid to 5/7/2028
- Flat 1 EPC (expired 2/7/22)
- Flat 1 EPC valid to 1/9/2032
- Flat 2 EPC (expired 2/7/22)
- Flat 2 EPC valid to 1/9/2032
- Flat 3 EPC (expired 2/7/22)
- Flat 3 EPC valid to 1/9/2032
- Flat 4 EPC (expired 2/7/22)
- Flat 4 EPC valid to 1/9/2032
- Electricity and Gas Bill for period 21/12/23 to 21/2/24
- Flat 2 SSE bill for period 22/8/2017 to 7/11/2017
- Flat 3 SSE bill for period 13/5/2021 to 13/8/2021
- Flat 4 SSE bill for period 22/8/2017 to 7/11/2017
- Statutory declaration from tenant of annexe to confirm continuous occupation of all flats for the required qualifying period and preceding the period, back to 1st October 2017.
- Assured Shorthold Tenancy Agreements:
 - Annexe – covering period 1/10/20 to 30/9/25
 - Flat 1 – covering period 3/1/20-4/1/25 (gap of 2 days)
 - Flat 2 – covering periods 7/4/19-6/4/20 (outside of required qualifying period); 7/4/20-6/4/22; and 7/4/23-6/4/25
 - Flat 3 – covering periods 4/3/21-31/3/22; 4/3/23-3/3/24; 29/6/23-28/6/25
 - Flat 4 – covering periods 23/1/20-19/1/24

As received 18th February 2025:

- Assured Shorthold Tenancy Agreements:
 - Flat 3 – covering period 04/03/2023 – 03/03/2024
 - Flat 3 – covering period 29/06/2023 – 28/06/2024
 - Flat 3 – covering period 29/06/2024 – 28/06/2025
 - Flat 4 – covering period 20/01/2024 – 19/01/2025
 - Flat 4 – covering period 18/01/2025 – 17/01/2026

3. RELEVANT PLANNING HISTORY

None post 1988

4. CONSULTATIONS

Planning Enforcement: No records.

Electoral Registration: The number of electors registered from 2015-2024 is as follows:

	Number of Electors Registered at 66 Cressingham Road
2025	4
2024	4
2023	7
2022	7
2021	7
2020	7
2019	4
2018	4
2017	4
2016	3

Council Tax: Our records show this property is banded as one single dwelling since at least 01.04.1997.

Legal: This is an application for a change of use from a C3 dwelling to five self-contained flats, so the enforcement period for eligibility is 4 years prior to the submission of the application (20.12.2024).

I have reviewed the evidence submitted by the applicant i.e., tenancy agreements, EPC's, and electricity bills etc. It is clear the building has been in continuous use as five self-contained flats since 2020, so it meets the period for eligibility. I note there is a gap of occupancy for flat 2 from 07.04.2022 to 06.04.2023, however, this period has been covered by the tenants statutory declaration which confirms the flat was in occupation.

As a result, we consider the certificate can be safely granted and we do not hold any contradictory evidence to state otherwise.

5. LEGAL AND PLANNING POLICY CONTEXT

Section 10 of the Planning and Compensation Act 1991 established a procedure that enables anyone who wishes to do so, to apply to the local planning authority to determine whether a proposed use or operation, or an existing operational development or an existing use of land, or any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, is lawful, and if so, be granted a certificate to that effect.

A Lawful Development Certificate is a legal document stating the lawfulness of past, present or future development. If granted by the local planning authority, the certificate means that enforcement action cannot be carried out to the development referred to in the certificate.

However, the certificate will not protect from enforcement action by the planning authority if the specified use or development is then changed 'materially' without a planning application for it.

The certificate is not a planning permission. The planning merits of the use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The responsibility is on the applicant to provide evidence to support the application.

Section 191 of the Town and Country Planning Act 1990 is the relevant section dealing with issues for Certificates of Lawful Existing Use or Development. This section provides the mechanism for any person to ascertain whether an existing use or development would be lawful, which is by the submission of an application. Section 191(2) states that the use will be lawful if no enforcement action could be taken in respect of the use and that the use or development does not constitute a contravention of any of the requirements of an Enforcement Notice then in force. If there is a Notice in force, then the time period for the Certificate cannot run in relation to that particular breach.

Section 191(4) provides that if the LPA is satisfied that the existing use or development is lawful, then a Certificate must be granted. The burden of proof to prove that this use has existed for 4 years rests with the applicant and the test is on the balance of probabilities. Additionally, as a local authority we are advised that if we have no evidence to the contrary and the applicant's evidence is sufficiently clear and unambiguous then the certificate should be granted. Section 191(4) further provides that the authority can grant such certificate as described in the application or such description as modified or substituted by us.

The NPPG states that *"The applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use (section 191 of the Town and Country Planning Act 1990), if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability"*.

6. APPRAISAL

In order for a certificate of lawfulness to be granted for this application, the applicant must demonstrate that the use of 66 Cressingham Road, as five self-contained flats, began more than 4 years before the date of this application of 20th December 2024 and has been in continuous use as five flats for the relevant time period which is **20/12/2020-20/12/2024**. The application form and accompanying information state that the use of all flats began 1st October 2017.

With regard to the internal consultee responses the Electoral Registration team has confirmed that there have been between four and seven persons registered during the qualifying period.

The Planning Enforcement Team has confirmed that there is no enforcement history at this address.

Council Tax has the house still banded as one property.

Turning to the evidence submitted by the applicant, i.e. a statutory declaration made by the tenant of the Annexe, tenancy agreements, electric bills, and Energy Performance Certificates, these support the claim that the property has been in use as five self-contained flats (three 1 beds and two studios), for at least four years, prior to the application being submitted.

However, in the qualifying period of 20/12/2020-20/12/2024 no Assured Shorthold Tenancies have been submitted for the periods as follows, but the submitted Statutory Declaration by the tenant of the Annexe covers details of the occupants of Flats 1-4 for the whole of the qualifying period and preceding period back to 1st October 2017

- 2 days for Flat 1 (3/1-4/1/24)
- 12 months for flat 2 (7/4/22-6/4/23)
- 12 months for flat 3 (4/3/22-3/3/23)
- 3 months for flat 3 (4/3/24 to 28/6/24)
- 12 months for Flat 4 (20/1/24-19/1/25)

The applicant, however, has confirmed the following in an email dated 18th February 2025:

- The minor gap in AST documentation is due to void periods for property preparation or tenancies rolling over into periodic agreements, particularly during the COVID-19 pandemic, when we opted not to increase rent to support tenants.
- The Statutory Declaration by Tomas Chatur was signed in April 2023, the application was submitted in December 2024, which is why it does not reflect subsequent tenancy updates.
- Additional AST agreements have been submitted to clarify tenancy transitions and the current occupancy status of Flats 3 and 4.

The site visit carried out by the planning officer on 30th January 2025 provided good confirmation of the accuracy of the floor plans, which further supports the claim. In the absence of evidence to the contrary, on the balance of probabilities, it can be confirmed that 66 Cressingham Road has operated as five self-contained flats (Use Class C3 residential) for at least a period of 4 years and is, therefore, immune to enforcement action.

The applicant has provided sufficient evidence or other information that satisfies the Local Planning Authority that the use of 66 Cressingham Road as five self-contained flats, comprising two 1 beds at ground floor, one 1 bed and one studio at first floor, within the main house, and one studio flat within the annexe (C3 use), began more than 4 years ago and there is no evidence to suggest this use was lost or changed. It follows that there is sufficient justification to grant the certificate of lawfulness applied for by the applicant.

7. CONCLUSION

In the absence of the information or evidence to contradict or make the applicant's version less probable, on balance, it is considered that the premises at 66 Cressingham Road has been in continuous use as five flats for a period of at least 4 years. It is, therefore, considered that a Certificate of Lawfulness for the use of the building as five flats (C3) should be granted and the certificate will relate only to the subject land, shown edged red on the plan below.

8. RECOMMENDATION

GRANT Certificate

Location Plan



Not to scale